

Daniel C. Girard (State Bar No. 114826)
Jordan Elias (State Bar No. 228731)
Adam E. Polk (State Bar No. 273000)
Dylan Hughes (State Bar No. 209113)

GIRARD GIBBS LLP

601 California Street, 14th Floor
San Francisco, California 94108

Tel: (415) 981-4800

Fax: (415) 981-4846

dcg@girardgibbs.com

je@girardgibbs.com

aep@girardgibbs.com

dsh@classlawgroup.com

Joseph G. Sauder (*pro hac vice* forthcoming)

Matthew D. Schelkopf (*pro hac vice* forthcoming)

SAUDER SCHELKOPF LLC

555 Lancaster Avenue

Berwyn, Pennsylvania 19312

Tel.: (610) 200-0580

jgs@sstrialawyers.com

mds@sstrialawyers.com

Counsel for Plaintiff R.E.

[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

R.E., individually and on behalf of all
others similarly situated,

Plaintiff,

v.

PACIFIC FERTILITY CENTER and PRELUDE
FERTILITY, INC.,

Defendants.

Case No. 3:18-cv-01586-JSC

JOINT STIPULATION AND ~~[PROPOSED]~~
ORDER FOR CONSOLIDATION AND
SETTING DEADLINES

Additional Cases on Next Page

JOINT STIPULATION AND ~~[PROPOSED]~~ ORDER FOR CONSOLIDATION AND
SETTING DEADLINES

CASE NO. 3:18-CV-01586-JSC

MEGAN BAUER AND JONATHAN BAUER,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

PACIFIC FERTILITY CENTER; PRELUDE
FERTILITY, INC; DOES 1-10, inclusive,

Defendants.

Case No. 3:18-cv-01634-SK

A.B., C.D., and E.F., individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

PACIFIC FERTILITY CENTER and PRELUDE
FERTILITY, INC;

Defendants.

Case No. 3:18-cv-02298-LB

WHEREAS, there are currently three related proposed class actions currently pending in the Northern District of California: (1) *R.E. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-01586-JSC (N.D. Cal. filed Mar. 13, 2018) (the “*R.E. Action*,” pending before the Honorable Jacqueline Scott Corley); (2) *Bauer, et al. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-01634-SK (N.D. Cal. filed Mar. 15, 2018) (the “*Bauer Action*,” pending before the Honorable Sallie Kim); and (3) *A.B., et al. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-02298-LB (N.D. Cal. filed April 17, 2018) (the “*A.B. Action*,” pending before the Honorable Laurel Beeler).

WHEREAS, Plaintiffs in the *R.E.*, *Bauer*, and *A.B.* Actions, along with Defendants Pacific Fertility Center, and Prelude Fertility, Inc., (together, the “parties”), by and through their respective counsel, agree that consolidation of the *R.E.*, *Bauer*, and *A.B.* Actions is appropriate because the Actions involve common questions of law and fact in that each involves breach of contract and negligence claims (among others) asserted against Pacific Fertility Center and Prelude Fertility, Inc., arising out of the same March 4, 2018 incident in which liquid nitrogen levels in one of Defendants’ tanks are alleged to have declined, resulting in alleged damage to those who entrusted Defendants with their eggs and embryos;

WHEREAS, Pacific Fertility Center and Prelude Fertility, Inc. are currently obligated to respond to the *R.E.* and *Bauer* complaints on April 30, 2018, pursuant to the Parties’ Joint Stipulation Extending Time to Respond to the Complaint, filed April 18 (ECF 15);

WHEREAS, in view of the parties’ stipulation to consolidate, the parties propose, subject to Court approval, that this Action proceed on the following schedule: Plaintiffs will file a consolidated complaint within thirty days after entry of an order consolidating the *R.E.*, *Bauer*, and *A.B.* Actions; Defendants will answer or otherwise respond within thirty days after the filing of the consolidated complaint; if the response is by motion, Plaintiffs’ opposition will be due thirty days after the motion is filed; and Defendant’s reply will be due twenty-one days after the opposition is filed;

WHEREAS, while the *R.E.*, *Bauer*, and *A.B.* Actions are the only federal actions arising out of the March 4, 2018 incident at Pacific Fertility Center that the parties are aware of, other actions arising out of the same incident have been filed in California state court; and

WHEREAS, the parties agree that if Defendants answer, move, or otherwise respond to any other action filed in, transferred or removed to this Court arising out of the March 4, 2018 incident before their deadline to respond to the consolidated complaint, they must concurrently answer, move, or respond to: (1) the consolidated complaint; or (2) if the consolidated complaint has not been filed, the complaints in the *R.E.*, *Bauer*, and *A.B.* actions;

NOW THEREFORE, the parties through their respective counsel and subject to the Court's approval hereby stipulate that:

1. The following Actions pending in this District, and any other action arising out of the same or similar operative facts now pending or hereafter filed in, removed to, or transferred to this District shall be consolidated for all purposes, including pretrial proceedings, trial, and appeal, pursuant to Federal Rule of Civil Procedure 42(a) (hereafter the "Consolidated Action");

- *R.E. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-01586-JSC
- *Bauer, et al. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-01634-SK; and
- *A.B., et al. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-02298-LB.

2. All papers filed in the Consolidated Action must be filed under Case No. 3:18-cv-01586-JSC, the number assigned to the first-filed case, and must bear the following caption:

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

*IN RE PACIFIC FERTILITY CENTER
LITIGATION*

Case No. 3:18-cv-01586-JSC

3. The case file for the Consolidated Action will be maintained under Master File No. 3:18-cv-01586-JSC.

4. The Clerk is directed to administratively close the following related cases:

- *Bauer, et al. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-01634-SK; and
- *A.B., et al. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-02298-LB.

5. Any proposed class action subsequently filed in, transferred or removed to this Court that arises out of the same or similar operative facts as the Consolidated Action will be consolidated with the Consolidated Action.

6. The following deadlines will be set: Plaintiffs will file a consolidated complaint within thirty days after entry of this stipulation to consolidate the *R.E.*, *Bauer*, and *A.B.* Actions; Defendants will answer or otherwise respond within thirty days after the filing of the consolidated complaint; if the response is by motion, Plaintiffs' opposition will be due thirty days after the motion is filed; and Defendants' replies will be due twenty-one days after the opposition is filed.

7. If, during the course of the schedule outlined in paragraph 6, Defendants answer, respond, or move to dismiss a complaint filed in, transferred or removed to this Court relating to the March 4, 2018 Pacific Fertility Center incident that contains allegations substantially similar to the allegations raised in the *R.E.*, *Bauer*, and *A.B.* complaints, Defendants will answer, move, or otherwise respond to: (1) the consolidated complaint; or (2) if no consolidated complaint has been filed, the complaints in the *R.E.*, *Bauer*, and *A.B.* actions no later than the same date on which Defendants respond to the other action(s).

8. If Defendants answer, respond or move to dismiss another complaint relating to the March 4, 2018, Pacific Fertility Center incident which is not filed in this Court during the course of the schedule outlined in paragraph 6, the parties agree to use their best efforts to coordinate discovery and the resolution of common legal issues existing between those actions not filed in this Court and those matters pending in this Court.

9. By entering into this stipulation it is agreed by and between the parties through their attorneys that the Defendants are not waiving any right they may have to challenge and/or object to class certification, federal jurisdiction and/or any objection or challenge to the class action to which they would be entitled by law, nor are Defendants waiving any objections or defenses they may have as to any issues, either procedural or substantive, arising out of the consolidated action.

IT IS SO STIPULATED.

Dated: April 27, 2018

Respectfully submitted,

By: /s/ Adam E. Polk

Daniel C. Girard (State Bar No. 114826)

Jordan Elias (State Bar No. 228731)

Adam E. Polk (State Bar No. 273000)

Dylan Hughes (State Bar No. 209113)

3

JOINT STIPULATION AND ~~[PROPOSED]~~ ORDER FOR CONSOLIDATION AND
SETTING DEADLINES

CASE NO. 3:18-CV-01586-JSC

GIRARD GIBBS LLP

601 California Street, 14th Floor
San Francisco, California 94108
Tel: (415) 981-4800
Fax: (415) 981-4846
dgc@girardgibbs.com
je@girardgibbs.com
aep@girardgibbs.com
dsh@classlawgroup.com

Joseph G. Sauder (*pro hac vice* forthcoming)
Matthew D. Schelkopf (*pro hac vice* forthcoming)

SAUDER SCHELKOPF LLC

555 Lancaster Avenue
Berwyn, Pennsylvania 19312
Tel.: (610) 200-0580
jgs@sstrialawyers.com
mds@sstrialawyers.com

Counsel for Plaintiff R.E.

Dated: April 27, 2018

By: /s/ Adam B. Wolf

Adam B. Wolf (State Bar No. 215914)
Tracey B. Cowan (Cal. Bar No. 250053)
**PEIFFER ROSCA WOLF ABDULLAH CARR
& KANE**

4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Telephone: (415) 766-3545
Facsimile: (415) 402-0058
awolf@prwlegal.com
tcowan@prwlegal.com

Counsel for Plaintiffs Megan and Jonathan Bauer

Dated: April 27, 2018

By: /s Sarah R. London

Elizabeth J. Cabraser (State Bar No. 083151)
Lexi J. Hazam (State Bar No. 224457)
Sarah R. London (State Bar No. 267083)
Tiseme G. Zegeye (State Bar No. 319927)

**LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP**

275 Battery Street, 29th Floor
San Francisco, CA 94111-3339
Telephone: 415.956.1000
Facsimile: 415.956.1008

4

ecabraser@lchb.com
lhazam@lchb.com
slondon@lchb.com
tzegeye@lchb.com

Counsel for Plaintiffs A.B., C.D., and E.F.

Dated: April 27, 2018

By: /s/ Joseph S. Picchi
JOSEPH S. PICCHI
Joseph S. Picchi (State Bar No. 157102)
Aaron T. Schultz (State Bar No. 222949)
**GALLOWAY, LUCCHESI, EVERSON &
PICCHI**
2300 Contra Costa Blvd., Suite 350
Pleasant Hill, California 94523
Tel: (925) 930-9090
jpicchi@glattys.com
aschultz@glattys.com

Counsel for Defendant
PACIFIC FERTILITY CENTER

Dated: April 27, 2018

By: /s/ Erin M. Bosman
Erin M. Bosman (State Bar No. 204987)
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105
Tel: (415) 268-7000
EBosman@mofo.com

Counsel for Defendant
PRELUDE FERTILITY, INC

FILER'S ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), regarding signatures, I, Adam E. Polk attest that concurrence in the filing of this document has been obtained.

Dated: April 27, 2018

/s/ Adam E. Polk

Adam E. Polk

~~PROPOSED~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: April 30, 2018



HONORABLE JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE